



Paper No. 16

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OFFICE OF PETITIONS

In re Application of
Reif et al.
Application No. 10/018,636
Filed: December 13, 2001
Attorney Docket No. IN-12101

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DECISION ON
PETITION

This is a decision on the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)," filed September 2, 2003 in the above-identified application.

For the reasons set forth herein, the petition under § 1.137(b) is GRANTED.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed February 25, 2003. This Office action set forth a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). On April 30, 2003, applicants filed an amendment. On May 12, 2003, applicants filed a supplemental amendment. However, these amendments were determined by the examiner not to place the application in condition for allowance (Advisory Action mailed May 25, 2003). No proper reply having been filed and no extensions of time obtained, the above-identified application became abandoned effective August 26, 2003. The present petition precedes the mailing of a Notice of Abandonment.

The instant petition includes the required reply in the form of the filing of a Notice of Appeal (and appeal fee); payment of the petition fee; and a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." No terminal disclaimer is required on petition.

A petition for three-month extension of time (and fee) accompanied the instant petition. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$930.00 extension of time submitted with the petition on September 2, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The application file is being forwarded to Technology Center 1621 in light of the filing of the Notice of Appeal.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

A handwritten signature in black ink, appearing to read "Nancy Johnson", written over the typed name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions